IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4001 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARMAR DHIRAJBHAI VALAJIBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4001 of 1991

MS NITA PANCHAL on behalf of MR ND NANAVATI for Petitioner No. 1-8

MR MA BUKHARI, AGP for Respondent No. 1-4

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 01/02/2003

ORAL JUDGEMENT

There are, in all, eight petitioners under this petition. The petitioner No.8 has expired during the pendency of the petition. The main grievance raised by the petitioners in this petition is that the petitioners

have put up the services of more than ten to twelve years as seasonal employees and still they have not been regularised. The petitioners were apprehended of termination of their services and hence, they moved this Court seeking direction to respondent authorities to continue the services of the petitioners.

2) It is the case of the petitioners that though they were appointed on temporary basis, the post on which they were appointed is of permanent nature. It was further submitted that respondent Nos. 2 and 3 continued the services of the petitioners for eight months, and during the monsoon respondents appointed other persons as daily wagers. As soon as the monsoon was over they again reappointed the petitioners. The petitioners further submit that giving an appointment for eight months and terminating the services only for a period of four months is unfair labour practice, in view of the fact that the post on which the petitioners were working was of a permanent nature. The petitioners have also submitted that all other similarly situated persons were protected by this Hon'ble Court and inspite of this fact having been brought to the notice of the respondents, the petitioners were still apprehending that their services, would be terminated and hence the petitioners have filed this petition.

3) This Court has ordered to maintain status quo with regard to the petitioners. After service of notice, the appearance was filed on behalf of respondent authorities and an affidavit-in-reply was filed by Mr.B.C.Patel, Superintendent of Land Record cum Consolidation Officer. The respondents have raised the contention in affidavit-in-reply that as per the order of appointment the petitioners have been terminated on the completion of the prescribed period. It was further submitted that on completion of monsoon season, the petitioners would be reappointed to work as peons in the Survey Department. It is submitted that the daily wagers were appointed to do the work after giving priority to the petitioners. It was further stated in the affidavit-in-reply that their appointment orders were very specific and it was made clear that they would work only for eight months in pursuance of the relevant order and hence they were appointed only for a period of eight months.

4) Heard Ms.Panchal, the learned advocate appearing for the petitioners. She stated that the present petition is originally ordered to be heard along with Special Civil Application No.3305 of 1991. However, the

office has put on record that the said Special Civil Application is dismissed for default on 20th December, 1994. Today, a further affidavit is filed by one of the petitioners wherein it is stated that after passing the order of status quo on 6th August, 1991, Mr.B.C.Patel has filed an affidavit, in para 8 thereof it was stated that as directed by this Court in interim order, the petitioners would be preferring in the matter of appointment of Peon in Survey Department to do work as Survey Peon and the petitioners, therefore, be provided the work of Survey Peon as per the order passed by this Court. It was further stated in the said affidavit that all the petitioners, except petitioner No.8 are working in the Records Department. It was further stated that the department has also transferred some of the petitioners as their services are needed in another District. The petitioner No.7 was also transferred at Gandhinagar and he is discharging his duties at present at Gandhinagar.

5) It was further stated in the said affidavit that though it was stated in the office note that Special Civil Application No.3305 of 1991 is disposed of for default in the year 1994. However, the correct number of the petition is Special Civil Application No.3305 of 1984 which is similar to the present one and the learned Advocate has personally verified the records and found that the Special Civil Application No.3305 of 1984 along with Special Civil Application No.3306 of 1984 were decided by this Court (Coram : S.K.Keshote, J.) by allowing the said two petitions on 18-11-1997. The copy of the judgement is also placed on record along with the petition. It was further stated by Ms.Panchal that the ends of justice would be met and the petitioners would be satisfied, if the similar order is passed in the present petition, as it was passed in Special Civil Application Nos. 3305/1984 and 3306/1984.

6) Mr.Bukhari, learned Assistant Government Pleader on the other hand, has submitted that the petitioners were appointed purely on temporary basis and they could not claim regularisation. It was further submitted that they are in the service at present only because of the interim order passed by this Court, otherwise the initial appointment was only for the period of eight months and on completion of the said period, the services of the petitioners were required to be terminated.

7) I have heard Ms.Panchal, learned advocate for the petitioners and Mr.M.A.Bukhari, learned Assistant Government Pleader appearing for respondents and also

gone through the petition, affidavit-in-reply and further affidavit filed by the petitioners and also perused the order passed by this Court in Special Civil Application Nos. 3305/1984 and 3306/1984. Here, in the present case, the petitioners were appointed seasonally and on completion of the season their services were to be brought to an end and the petitioners have challenged the said apprehended action of the authorities in this petition. Though in the present case no order of termination is passed but the petitioners were apprehending the said order and have sought for protection of this Court. Hence, under the order of this Court the petitioners were continued in service for all these years. This petition is filed in the year 1991 and for about last twelve years the petitioners are in service. In the judgement of this Court (Coram:S.K.Keshote, J.), after considering the services of more than 13 years the Court has observed that it is in the interest of justice that the matter be disposed of with a direction to the respondents to consider whether now at this juncture it will be considered to be a case of seasonal appointment of the petitioners and the services of the petitioners would be dispensed with. The Court was of the view the that the said exercise would be undertaken and completed within six months from the date of receipt of the writ of this order. I am of the view that the view taken by the Court in the aforesaid case, can also be taken in the present case and similar directions are required to be given in the present case. The respondent authorities are, therefore, directed to consider the case of the petitioners for regularisation of their services. The respondent authorities are further directed to take an appropriate decision within a period of six months from the date of receipt of the certified copy of this judgement or from the date of receipt of the writ from this Court, whichever is earlier. The petitioners may also be given an opportunity to present their case before the respondent authorities and after considering their explanation, the respondent authorities can take their decision in the matter. It is made clear that if for any reason, the decision may be taken against the petitioners, the petitioners are given liberty to challenge the said decision before this Court, as the said decision would give fresh cause of action to the petitioners. However, if any adverse view is taken by the respondent authorities against the petitioners, the same may not be implemented within a period of one month from the date of communication of the said decision to the petitioners.

With these observations, the petition is disposed

of. Rule is made absolute with no order as to costs.

(K.A.Puj, J.)
/malek